Robert Marriott

THE Hainousness of Injustice

Done under the Pretence of

EQUITY:

IN A

SERMON

Preach'd in the

Cathedral Church of *Lincoln*,

Before the Honourable

BARON *TURTON*,

At the *ASSIZES* holden for that County on *Monday* the Eighth of *August*, 1698.

By *LAURENCE ECHARD*, A. M.
Prebendary of *Lincoln*, and Chaplain to the Right Reverend *James* Lord Bishop of that Diocese.

LONDON, Printed for *M. Wotton* at the *Three Daggers* in *Fleet-street*. 1698.

THE

Hainousness of Injustice

Done under the Pretence of

EQUITY:

IN A

SERMON

Preach'd in the

Cathedral Church of Lincoln

Before the Honourable

BARON TURTON,

At the ASSIZES holden for that County

on Monday the Eighth of August 1692.

THE PREFACE.

WHEN I preach'd this Sermon, I had no Thoughts of publiſhing it; nor was it the Advice or Importunity of Friends that occaſion'd it now. I was ſenſible that it was compos'd with too much Haſte and Careleſneſs, to deſerve a Publick View, when ſo many correct Sermons were already extant. But immediately after, finding my Reputation in ſome Hazard by Means of the Miſunderſtandings of ſome, and the Miſrepreſentations of others, I thought I cou'd do no greater Juſtice to my ſelf than to publiſh it, and ſo rectifie Peoples Miſtakes; eſpecially ſuch as aroſe from ſecond and third Hand Stories. It ſeems ſeveral Trades-men *as well as* Lawyers *were not well pleas'd with ſome Paſſages; and therefore cenſur'd me as a Perſon too Reflecting and Unmannerly to my Superiors: And that theſe Cenſures might ſeem juſt, my Words*

and Sense were much misrepresented, and several Passages related and discours'd of that were never in my Sermon. In sum, this is the Reason for my publishing this Sermon, which I have done just as it was preach'd, without any material Alteration. And since it made such a sensible Impression upon some, as to take notice of it to my Disadvantage, I hope the Publication of it may occasion some others to take notice of it to their own Advantage.

PROV.

PROV. xi. 1.

A falſe Balance is an Abomination to the Lord: but a juſt Weight is his Delight.

AS the Proverbs and Sayings of the wiſe Author of this Book are generally remarkable for being diſtinct and independent of each other; ſo they are no leſs remarkable for being often figurative, and of a very ſtrong and extenſive Meaning. So the Words of this Text; tho' they can literally ſignifie nothing but the Odiouſneſs of a falſe Weight or Balance in particular, yet they have truly and naturally a more enlarg'd and diffuſive Senſe, and do imply the Odiouſneſs not only of falſe Weights and Balances, but likewiſe of all Things of the like Nature and Conſequence; of all unfair and unfaithful Actions, of all unequal and injurious Proceedings, and of all falſe and irregular Diſtributions of Juſtice. In ſum, this Text, according to the general Meaning of its Words, does enjoin that great Vertue and Duty of *Juſtice*; a Quality which is in-

ſeparable from, and eſſential to the Great Judge of Heaven and Earth, and is as indiſpenſibly neceſſary for the Subſiſtence and Well-being of Mankind in this World, as for their eternal Felicity in the next.

But tho' theſe Words do ſtrictly prohibit all falſe and unequal Diſtributions of Juſtice both in Private as well as Publick Perſons, yet they are not ſo properly to be extended to all Kinds of Injuſtice whatſoever. They relate indeed to the moſt and worſt Kinds of Injuſtice, but not ſo poſitively and directly to all. For, as it has been obſerv'd by many, there are Two ſeveral Kinds of Injuſtice; the One open and bare-fac'd, without any Coverings for its native Crookedneſs and Deformities; and the Other ſecret and diſguis'd, ſo cunningly cloath'd and adorn'd, that it appears like Juſtice its ſelf: The One depends chiefly upon Force and Power, and the Other upon Treachery and Infidelity: The Former carries no Pretence with it beſides that of gratifying and profiting the Actor, and the Latter has always the plauſible Appearance of doing Juſtice to the ſame Perſon it really injures. Now the Words of my Text are deſign'd to manifeſt the Odiouſneſs and Hainouſneſs of this latter Kind; and do elegantly repreſent

repreſent it under the Notion of a *falſe Balance*. For a falſe Balance is always made uſe of under the plauſible Pretence of doing of Juſtice, tho' it has a contrary Effect; and whenſoever it wants that Pretence, the Unfairneſs is detected, it loſes its original Deſign, and conſequently ceaſes to be injurious.

To make a fuller and clearer Diſtinction between theſe two Kinds of Injuſtice, we may obſerve, That to the former Kind belong all Rapines and open Violence, all Robberies and Murders, and all unjuſt Plunderings and Devaſtations; to which we may add all thoſe particular Acts of Injuſtice which our Laws call *Thefts*. Theſe laſt indeed are generally tranſacted with the utmoſt Privacy and Secrecy, yet the Injuſtice is undiſguis'd and barefac'd, and they are not done with the Pretence of doing of Juſtice to thoſe Perſons they injure; nor have they the ſame treacherous and pernicious Circumſtances as belong to the latter Kind of Injuſtice, of which I am principally to treat.

This latter Kind, ſetting aſide Murders and Violence offer'd to Mens Bodies, is no leſs hurtful and injurious than the Other, and at the ſame time more deceitful and ungenerous; conſiſting of ſuch particular Acts of Injuſtice

as have always a fair, and very often a laudable Appearance. So that this is not bare and ſimple Injuſtice alone, but Injuſtice mix'd with, or wrapp'd up in ſome Act of Diſſimulation, Infidelity, and Villany. Of this Kind are all falſe Weights and Meaſures, all Cheats and Over-reachings in Bargains, all Breaches of Truſt and Infidelity, with an infinite Number of others of the like Nature; only we muſt not omit all unequal and falſe Diſtributions of Juſtice, eſpecially by ſuch to whom the Adminiſtration belongs, and where a general and publick Good is concern'd.

Having thus diſtinguiſh'd between theſe two Kinds of Injuſtice, and ſhown that there is a manifeſt Difference, it will not be improper to my preſent Deſign to compare them together, and to examine which is the moſt hainous of the two, and the moſt deteſtable in the Eyes of God. And I queſtion not but I may eaſily make it appear, that the Latter, which is the Subject of my Diſcourſe, is of a far more criminal Nature than the Former, and is therefore emphatically ſaid to be *an Abomination to the Lord.*

This Kind is more abominable than the other, Firſt in its *Nature*, and Secondly in its *Conſequences.*

Firſt,

First, It is more abominable in its *Nature*: And it will appear from the former Diſtinction, That this is a Complication of Crimes and Miſchiefs, whilſt the other is only Simple Injuſtice. This is a Mixture of many Impieties together, and thoſe of the meaneſt and baſeſt Kind; the Other is only one ſingle Act of Wickedneſs, without any Concomitants of Treachery and Infidelity. Open Violence and Robberies have ſometimes the Appearance of Courage and Bravery, and have ſome Reſemblance of the Acts of Heroes; but the Other are always vile and ungenerous, and will ever be accounted the Acts of Villains. But to ſet the Compariſon in a truer Light, and to give neither of them any ſpecious Names, the Former reſembles the Actions of a ſavage Beaſt, that cannot exceed the Bounds of its own Strength; but the Latter the Subtleties of the Devil, of whoſe Artifices we know no Limits.

Smaller Thefts are indeed of a meaner and more ungenerous Nature than open Robberies, yet ſtill they are generally as unmix'd, and are bare Acts of Injuſtice without any Pretence of Fairneſs and Fidelity. He who privately ſteals my Goods, or picks my Pocket, does

does a great Act of Injuſtice, but he does me no other Injury than the Value of the Goods or Money amounts to, and adds no other Sin to this; But he who cheats me in his Shop by falſe Weights, falſe Stories, and falſe Repreſentations, does the ſame Injuſtice and Injury to me as the other; but then, as an Addition to his Crime, he picks my Pocket more exquiſitely and ſecurely, impoſes upon my Underſtanding and common Faculties, and joins Lying and other Sins to his Injuſtice. So that it is apparent, That this Kind of Injuſtice is far more criminal in its very *Nature* than the other; not only becauſe it is viler and more baſe, but alſo becauſe it has the Addition of many other Crimes and aggravating Circumſtances from which the other is free. But,

Secondly, This Kind is more abominable than the other in its *Conſequences*; one of which is, That we have far leſs Security againſt theſe Kind of unjuſt Actors, than we have againſt the other; ſo that the Miſchiefs of it are more certain and inevitable, which is always a Circumſtance that makes a Crime more odious in the Preſence of God. Force can repel Force, but it cannot repel Treachery. We have Arms to ſtop the Fury of Robbers, Locks to prevent the Pilferings of Thieves,

and

and ſtrict Laws to ſecure us againſt the Inconveniencies of both; which, God be thanked, has been ſo effectual, that our Nation in general has not ſuffer'd any great and extraordinary Miſchiefs from either: But no Arms, no Locks, nor no Laws can ſecure us from the various Miſchiefs and Subtleties of a thorow-pac'd Villain. Nay, Laws will give us no Relief in many common and notorious Acts of Injuſtice. If a poor Wretch ſteals a ſmall Quantity of Goods, perhaps to cover his Nakedneſs, or to ſatisfie his Hunger, he ſhall certainly be puniſh'd for it: But another Perſon ſhall be permitted to ſteal what he pleaſes in his own Shop, in his Bargains, and after the like manner, without any Puniſhment or Cenſure from the Laws.

Now what is the Reaſon of the Difference, but only this? One is accounted *Theft* according to Law, and the Other not. But this makes not the Crime the leſs, but the greater before God; *who judgeth not as Man judgeth*, but reſerves ſuch Caſes as theſe for his peculiar Judgment and Puniſhment. I ſpeak not this to extenuate the Actions of Thieves, or to expoſe any Deficiencies in our Laws, which I grant cannot be made to reach all unjuſt Actions; but to ſhow, That this

Kind of Injuſtice is more hainous before God, not only in its *Nature*, but likewiſe in its *Conſequences*; ſince the Miſchiefs and Inconveniencies of the one are more unavoidable than thoſe of the other. Upon which Account it is, that God, as I juſt now hinted, does in a great meaſure reſerve Caſes of this Nature for his own peculiar Tribunal in the laſt and dreadful Day; and therefore he has more frequently, and with greater Threatnings manifeſted his Diſpleaſure againſt this Kind of Injuſtice than the Other; and particularly in the Words of my Text, where we are told, That it is *an Abomination to* Him; a Word that implies an extraordinary Degree of Hatred and Deteſtation.

But now to approach a little nearer to this preſent Publick Occaſion.—If all Acts of Injuſtice be odious in God's Sight, even in the meaneſt and moſt private Perſon, and eſpecially ſuch as are wrought by ſecret Springs, and under the Pretence of doing of Juſtice; then certainly thoſe muſt be exceedingly hainous before God that are done by Publick Perſons, and in a Publick Capacity, whoſe Employment it is to eſtabliſh all Things with the utmoſt Impartiality, and to ſee that no Injuſtice be done in a Nation. I hope I of-

fend

fend not, if I ſay, that I now mean the *Judges* of the Kingdom; Perſons from whom we receive ineſtimable Benefits and Advantages, and ſuch as keep up the vital Heat and Vigour of the State, purging it from all malignant and corrupted Humours. In theſe are repos'd a vaſt and mighty Truſt; and being plac'd in ſuch exalted Stations, they never want Opportunities of doing of much Good or much Injury. But conſidering the innumerable Frailties of Humane Paſſions and Inclinations, they often meet with great Temptations to miſlead them: And tho' the Greatneſs of their Dignities, and the Plentifulneſs of their Revenues, may well be ſuppos'd to ſet them above all *common* Attacks, yet it muſt be their Vertues alone that can ſecure them againſt ſuch as are *Extraordinary*. Therefore the good King *Jehoſhaphat*, when he ſet Judges over the Cities of *Judah*, gave this moſt remarkable Charge to them; *Take heed what you do; for ye judge not for Man, but for the Lord, who is with you in the Judgment. Wherefore now, let the Fear of the Lord be upon you, take heed and do it: for there is no Iniquity with the Lord our God, nor Reſpect of Perſons, nor taking of Gifts*, 2 Chron. c. 19. v. 6, 7. There cannot be a greater Motive and ſtronger Argument than the

Words of these two Verses: And were I to enter upon them, and insist upon all their Particulars, I shou'd seem to deviate too much from my first Subject and Design, which was to say something of the Cares and Duties not only of Judges, but likewise of all such Officers and Persons who depend upon them, and are concern'd in this present Publick Occasion.

And here I might not improperly insist upon those great Conveniencies and mighty Advantages which the Nation receives from these publick Meetings and Administrations of Justice; and what Good the Judges and their Ministers are capable of doing. And more especially I might insist upon those several Acts of Injustice which are *sometimes* done by Judges themselves, but *more frequently* by Lawyers and Officers of the Court. *These* do most properly belong to my present Subject and Occasion: But to search and to dive into all these Particulars, as it is a Task exceeding tedious, and almost endless, so it is likewise an Office very ungrateful to some, and will be thought unmannerly by others. However, I crave leave to say something concerning two Particulars, both of which are exceeding Grievances; yet they are by many vindicated,

and

and look'd upon as Matters not in themſelves unjuſt. They are,

Firſt, Delaying and deferring of Juſtice when it is really due: And,

Secondly, Knowingly to undertake and manage an unjuſt Cauſe.

The firſt Particular belongs principally to the Judges, and the ſecond to the Lawyers and Officers; and the One is frequently the Cauſe of the Other.

1. Delaying and deferring of Juſtice when it is really due. This, with Submiſſion, I take to be a notorious Piece of Injuſtice. For, whenſoever it is in the *Power* of the Judge and the Court to do a Man Juſtice that ſues for his real Rights, and they wilfully defer and delay it, it is undoubtedly unjuſt, and *an Abomination to the Lord.* The detaining and keeping a Perſon from his Right, is a manifeſt Injury to him, and ſometimes occaſions the Loſs of it at laſt; but very often it makes it ſo inconvenient and burdenſom to him, that it wou'd have been as well, or perhaps better for him to have loſt it at firſt. Whether this growing Miſchief has aroſe from the Number and Variety of our Laws and Caſes, the native Liberty of our State and Conſtitution, the Methods and Practices of the Courts of Judicature,

cature, or from the unreaſonable Compliance of the Judges themſelves, or from all theſe together, I ſhall not pretend to determine. For my own Part, I ſhall only take the Freedom to ſay, That the Tedioufneſs of many of our Law-Suits, and the frequent Difficulties of obtaining Juſtice, are become a Burden almoſt inſupportable to this Nation; and a Burden from which many barbarous, and I may add, inſlav'd Nations are in a great meaſure free. Theſe *Regular Proceedings* are accounted the honourable Badges and Tokens of our Liberties; but as they are often manag'd, they are grown ſo heavy and grievous to us, that Fetters and Chains are almoſt as eligible.

I muſt confeſs, that theſe are Miſchiefs and Misfortunes that do chiefly attend the moſt civiliz'd and polite, as well as the moſt free and eaſie Governments. For in the Beginning and Infancy of Kingdoms and Common-Wealths, the Laws are generally few and ſtrict, the Suits eaſie and ſoon determin'd, ſo that Juſtice is continually done without any Trouble or Burden. Then *Juſtice* is a Lady free and generous, modeſt, yet eaſie of Acceſs, and ready to aſſiſt all that ſue to Her. But when Dominions and Policy, Laws and Ordi-

nances,

nances, Arts and Sciences, and Riches and Vices encreaſe, then *Juſtice* is diſguis'd, and attended with ſuch numerous Trains, and muſt be waited upon with ſuch Variety of Formalities and pretended Regularities, that but few can be able to approach her Preſence. The Poor cannot purchaſe their Way through her Attendants, but muſt be ſatisfied without her Aſſiſtance.

Now it is generally acknowledg'd, That nothing ſo much enervates the Strength of a State, and relaxes the Sinews of a Government, as ſlow and dilatory Proceedings in Matters of Juſtice. They fill the Body Politick with ill and unwholeſom Humours for want of Exerciſe and Evacuation, and do in a great meaſure make the Blood and Spirits to ſtagnate. They make Way for all Kinds of Corruptions, and all Kinds of vile Practices; and have been the Cauſe of the Decay and Mortality of the greateſt Empires and Common-Wealths in the World.

The Danger of theſe was ſoon diſcover'd by the great Emperor *Veſpaſian*, who when he came to reform and revive a corrupted and ſinking Empire, he found it abſolutely neceſſary to regulate the Tediouſneſs of Law-Suits, and to retrench the innumerable Proceſſes and

Appeals

Appeals in the Courts of Judicature; without which the State it ſelf muſt have ſuffer'd. His Example was happily follow'd by his excellent Son *Titus*, and alſo by the renowned *Trajan*, who beſides theſe Regulations, utterly exterminated all the *Delators*, *Promoters*, and *Pettifoggers* in *Rome*, and put them to all Kinds of ignominious Puniſhments, as the Peſts of the City, and the Diſturbers of the Publick Peace. The Care and Wiſdom of theſe Princes recover'd the State, and kept it alive for ſome Ages longer than cou'd have reaſonably been expected. To deſcend to a more modern Inſtance, I might mention the preſent *Turkiſh* Empire, which is acknowledg'd by all to be overgrown with ſuch notorious Corruptions and Briberies, and to abound with ſuch Flaws in Policy, as are ſufficient to ſink that or any other State: Yet we are aſſur'd by the moſt skilful Politicians, That this Empire is kept up by almoſt one Thing alone; which is, The extraordinary quick Diſpatch in all Matters of Juſtice. This does in a great meaſure ſet all Things right, and makes Amends for all the other Errors and falſe Steps in the Government.

I do not pretend to propoſe any of theſe Examples for our own Imitation, but only mention

mention them to ſhow the fatal Miſchiefs of dilatory Proceedings in Juſtice, and the Advantages of the contrary Practices. And for that I might produce great Numbers of Inſtances; but I am ſatisfied that I need not appeal either to Hiſtory or Example, to prove ſo manifeſt a Truth. It is ſufficient for me to ſhow, That theſe are real Acts of Injuſtice, and are never to be allow'd when it is in the *Power* of Judges and Magiſtrates to prevent them. And I may add, That tho' Judges always act by a limited Power, which the Laws themſelves do ſometimes ſtreighten to an inconvenient Degree; yet ſtill they have a Power of Relieving, if not Remedying theſe Miſchiefs in moſt Caſes. I hope I reflect upon none here preſent, when I ſay, It is a Shame to good Men, and a Wonder to wiſe Men, That ſuch frivolous Pleas, and ſuch ridiculous Niceties ſhou'd be *urg'd* and *allow'd* in Courts of Judicature, as we often find; and all this to ward off a preſent Blow, and to hinder a Man as much as poſſible of his real Rights and Eſtate. This may truly be call'd *a falſe Balance* and an *Abomination*: For this is doing a Perſon an Injury, and then ſhowing him Law for it; which is abuſing him beſides, and likewiſe ſcandalizing and profaning our Laws,

which were never made to do or countenance any Piece of Injuſtice. Now one great Cauſe of theſe tedious and unreaſonable Proceſſes in Law, is,

2. The Other Particular which I propos'd to treat of: Which is, Knowingly to undertake and manage an unjuſt Cauſe.

Now this is a Matter that does not ſo properly belong to Judges of Courts, as to *Pleaders* and *Advocates*; and it is ſo frequently practis'd in all Courts, that by many it is not only thought to be no Sin, but a Thing very convenient and neceſſary. But I am ſatisfied that nothing is more eaſily prov'd than the Injuſtice and Sinfulneſs of ſuch Practices. For he who knowingly promotes and willingly joins with a Perſon in an unjuſt Cauſe, is no leſs guilty than the Perſon himſelf, and very often more; for the Client is not ſo proper a Judge of the Juſtneſs of a Cauſe as the Counſellor is. How often does a juſt Cauſe and a juſt Man ſuffer by theſe Means? When a Pleader ſhall employ the utmoſt of his Eloquence, Wit, and Learning, to promote a manifeſt Piece of Injuſtice, and to ruin another Man's juſt Rights? A Thing which, God knows, has too frequently ſucceeded in this Nation. This is the more dangerous and fatal,

fatal, because Quirks and Artifices are never wanting to disguise the Justice of the Matter, and to gild over the Blackness of the Crime, which are sometimes subtle enough to confound the greatest Lawyers and Judges themselves.

But it is commonly alledg'd and objected in the Case, That *Pleaders* and *Advocates* need not concern themselves with the Justice of a Cause; but it is their sole Employment to assist their Clients, and do them what Service they can: So that if the Cause be bad, it is their Client's Fault, and not theirs, who only act according as their Business and Professions lead them.

In answer to which Objection, I must take leave to assert, That no Mans lawful Business and Employment can necessarily lead him to commit an unjust Action: And to say, He is oblig'd to it by his Profession, is a notorious Reflexion upon his Profession; which is to suppose that his Profession obliges him to do that which God himself has always prohibited. But to put this Matter beyond all Dispute, I wou'd demand of Him who knowingly pleads and promotes an unjust Cause, Whether he enters upon it with an Expectation of carrying it, or not? If he expects and endeavours

to carry the Cauſe, he then does Injuſtice to the contrary Party whom he oppoſes, by hindering or endeavouring to hinder him of his real Right: If he does not expect to carry it, he betrays and injures his own Client, which is no leſs unjuſt than the other. So that take it either Way, tho' it may ſometimes be palliated and extenuated, it can never be vindicated. And it is a Surpriſe to good Men ſometimes to ſee Perſons of no common Parts and Learning ſtanding up openly and before the World, to ſmooth over an odious Cauſe, and vindicate an Action in its ſelf manifeſtly unjuſt. This indeed is ſinning with Security, and without Shame; and acting wickedly without either Fear or Remorſe. Certainly ſuch Pleadings muſt prove mightily to their Diſreputation, and be a great Hinderance to their Buſineſs and Profeſſions. But I hope, and am fully perſwaded, that this Audience is free from ſuch Perſons as I am condemning; therefore I wou'd not be thought to reflect upon any here preſent.

Having briefly gone through theſe two Particulars I propos'd, I ſhall omit many other unjuſt Practices that are too frequent in Courts of Judicature, and ſhall only obſerve in general, That all ſuch Acts of Injuſtice as are done

in

in publick Courts, and by publick Persons, are of the blackest Dye, and the most odious before God; being always of a higher Concern, and of a more pernicious Consequence than the unjust Actions of private Men. Judges and Magistrates have the Stamp of Heaven upon them, and in their Distributions of Justice do in some measure represent the great Judge of all the Earth. Now if *They*, who are set up purposely to do Justice to others, shall commit any Errors, and make any false Steps, as they are most injurious to the Publick, so they are most dangerous and fatal to themselves; and the greater and more exalted the Persons are, the more hainous are their Crimes.

Tho the Actions of Judges and Magistrates are seldom publickly censur'd, and more rarely punish'd in this World, yet the Supreme Judge of all Men will remember them, and do them Justice too, by making them eternal Examples of his Wrath and Vengeance. When that terrible Judge shall at the last great Day do Justice to all Mankind; when all the Mysteries of Iniquity shall be unfolded, and all Mens secret Thoughts and monstrous Imaginations be expos'd in their native Deformity to the World; then shall the Actions of all unjust Judges, Magistrates, and Officers be laid open in the most publick and exemplary Manner, and be punish'd, not as the

Actions

F 145205

Actions of Single Men, but as the Crimes of whole Societies. To whom much is given, much will be requir'd; and a Man had a thousand times better be an Ideot, a Natural, and the most vile and despicable of all Humane Kind, than by his great Parts and Learning to raise himself to the highest Stations, and act contrary to his Trust. Parts and Learning are most dangerous Engines when misapply'd; and a Man had far better be without them, than to abuse them. To speak in the plainest Terms, A Man had much better be a Fool than a Knave; tho' the former is generally more despicable in the Eye of the World. For Folly is only a Misfortune, and the unhappy Effects of meer Nature; but Knavery is a Monster begotten by the Devil, which will certainly carry a Man to the black Place where it had its Birth.

To conclude all, The Matters that I have insisted on are of the highest Importance, both to the Honour of God, and to the publick Peace of the Nation; and as I have taken the Freedom to speak some Truths without Fear or Complaisance, so I hope I have spoken them without either Rudeness or Indecency.

Now to God the Father, to God the Son, and to God the Holy-Ghost, be all Honour and Glory, now and for evermore. Amen.

FINIS.